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No. 77-436

In the Supreme Court of the United States

OCTOBER TERM, 1977

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

MCI TELECOMMUNICATIONS CORP., ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

The Federal Communications Commission supplements its petition and reply, pursuant to Rule 24(5), to invite the Court's attention to a recent decision of still another circuit construing the Commission's Specialized Common Carrier Services policy in a manner that conflicts with the decision below in this case. The Second Circuit (Kaufman, C.J.), in a summary of the "position and function of licensed communications carriers" in this country, stated:

> Recently, the FCC has encouraged entry of new carriers into the domestic communications field. In the early 1970's, the Commission began licensing various Domestic Satellite Common Carriers ("DSCCs") and Specialized Common Carriers ("SCCs") to offer, in competition with AT&T, private line service to governmental and large private commercial users. *See,*

e.g., Specialized Common Carrier Services, 29 F.C.C. 2d 870 (1971) * * *.

Western Union International, Inc. v. *FCC*, Nos. 77–4183, 77–4184, 77–4191, 2d Circuit, decided December 21, 1977 (footnote omitted).

The quoted language was not the holding of the case, nor was it an essential premise to the decision. In that sense, it does not pose the direct conflict that the Third and Ninth Circuit decisions posed. (See Pet., pp. 8–9, 13–15; Reply, pp. 2–3.) However, it does confront the Court with a third circuit that has construed Specialized Common Carrier Services authorizations as limited to private line services—in direct conflict with the holding of the District of Columbia Circuit that the authorizations are not limited.

Respectfully submitted,

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